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STATE OF NEW MEXICO NEW MEXICO
WATER QUALITY CONTROL COMMISSION

IN THE MATTER OF: PROPOSED)
AMENDMENTS TO STANDARDS FOR)
INTERSTATE AND INTRASTATE)
WATERS, SECTION 20.6.4 NMAC.)
_____)

Docket No. WQCC 20-51 (R)

**JOINT PROPOSED STATEMENT OF REASONS
BY COMMUNITIES FOR CLEAN WATER AND
THE GILA RESOURCES INFORMATION PROJECT**

Pursuant to the New Mexico Water Quality Control Commission's Rulemaking Procedures, 20.1.6.304 NMAC, Communities for Clean Water and the Gila Resources Information Project hereby submit their proposed statement of reasons in the 2021 Triennial Review proceeding. It is submitted in the format of proposed findings of fact and conclusions of law.

PROPOSED FINDINGS OF FACT

I. PROCEDURAL BACKGROUND

A. THE PETITION

1. On August 19, 2020, the Department submitted a Petition for Regulatory Change to the Commission proposing various modifications to the standards and other amendments to the regulations. The Department filed an amended petition on March 12, 2021.
2. Several other parties have also proposed various amendments to the regulations. CCW and GRIP have taken a position on some, though not all, of these proposed amendments

B. THE PARTIES

3. Communities for Clean Water, founded in 2006, is a coalition of several diverse organizations that have a strong interest in protecting the precious water resources of Northern New Mexico, particularly from the threats posed by Los Alamos National

Laboratory. Communities for Clean Water is made up of Amigos Bravos, Tewa Women United, Honor Our Pueblo Existence or HOPE, Concerned Citizens for Nuclear Safety, the New Mexico Acequia Association, and the Partnership for Earth Spirituality. The organization's mission is to ensure that community waters adversely affected by Los Alamos National Laboratory are kept safe for drinking, agriculture, sacred ceremonies, and a sustainable future. CCW-GRIP Ex. 2 at 2.

4. The Gila Resources Information Project is a New Mexico nonprofit membership organization, tax-exempt under section 501(c)(3) of the Tax Code, established in 1998, and based in Silver City, New Mexico. GRIP has approximately 1000 members. GRIP's mission is to promote community health by protecting the environment and natural resources of southwest New Mexico, including protecting surface water and groundwater. GRIP advocates for protection of surface water and groundwater. CCW-GRIP Ex. 8 at 1.

B. THE CCW-GRIP WITNESSES

5. Ms. Kathy Wan Povi Sanchez testified on the issues of sampling and analysis and environmental justice. CCW-GRIP Ex. 2.
6. Ms. Sanchez holds a Bachelor of Sciences degree in Education-Elementary in Chemistry and Biology, from the University of New Mexico. She also holds a Master of Arts degree in Special Education from the University of New Mexico. CCW-GRIP Ex. 2 at 1; CCW-GRIP Ex. 3.
7. Ms. Sanchez was a credible witness.
8. Ms. Pam Homer testified on the issues of climate change, the definition of "toxic pollutants," the definition of "emerging contaminants," sampling and analysis, and the criteria to protect the health of humans who ingest fish and shellfish. NMED Ex. 5.

9. Ms. Homer holds a B.S. in earth sciences from the University of Notre Dame and a M.S. in Resource Geography from Oregon State University.
10. I worked at the Department for 18 years, until 2020, in various technical and management positions in the Ground Water Quality Bureau and the Surface Water Quality Bureau. Her position in Surface Water was as the Water Quality Standards Coordinator, a position she held from 2007 until 2012. Her responsibility was to provide guidance to the Bureau implementing the water quality standards. She also managed a team that developed new and revised water quality standards proposals based on scientific analysis, state and federal policy, and stakeholder concerns. She initiated and coordinated the 2009 Triennial Review, which began with public outreach in 2008 and culminated in 2010 with EPA's approval of the adopted revisions to the standards. She was the Bureau's primary technical witness in that rulemaking. CCW-GRIP Ex. 5 at 1-2; CCW-GRIP Ex. 6.
11. Ms. Homer was a credible witness.

C. THE HEARING

12. The Commission held a hearing on the petition for five days from July 13 to July 17, 2021.
1-5 Tr.
13. The hearing was held on a virtual platform due to the COVID-19 Delta Variant pandemic. 1
Tr. p. 32, line 22 to p. 33, line 2.
14. In addition to the Department, the following parties participated in the hearing: Amigos Bravos; Communities for Clean Water; the Gila Resources Information Project; the United States Department of Energy ("DOE"); Triad National Security LLC ("Triad"); the New Mexico Mining Association; the Buckman Direct Diversion Board; and the San Juan Water Commission.

15. During the hearing, xx expert witnesses testified on behalf of the parties. Witnesses
16. During the hearing, xx members of the public gave public statements. 1-5 Tr.

II. ISSUES

A. CLIMATE CHANGE

17. The Department proposes adding the following new paragraph D under section 20.6.4.6
NMAC: “These surface water quality standards serve to address the inherent threats to water quality due to climate change.” NMED Ex. 9 at 1.
18. Although it would be added to the “objectives” section of the regulations, the Department’s proposed new provision is more of a statement of effect than a statement of an objective or purpose.
19. A policy statement provides direction to the Department and the Commission to investigate how and whether the water quality standards could mitigate the impacts of climate change. A policy statement invites the Department and other parties to consider the question and to develop proposals that could better shield aquatic ecosystems, drinking water sources, ceremonial traditions, water-dependent industries, and favorite recreational pastimes from the deleterious effects of climate change. CCW-GRIP Ex. 5 at 4-5.
20. CCW and GRIP propose the following alternate new subsection D to section 20.6.4.6: “A further purpose of these surface water quality standards is to address the inherent threats to water quality due to climate change.” CCW-GRIP Revised Ex. 1 at 1; CCW-GRIP Ex. 5 at 5; 1 Tr. p. 261, lines 3-7.
21. The CCW and GRIP proposed new provision is a statement of purpose. CCW-GRIP Revised Ex. 1 at 1.
22. The Department proposes adding the following new definition of “climate change” to section 20.6.4.7.C NMAC:

“Climate change” refers to any significant change in the measures of climate lasting for an extended period of time, typically decades or longer, and includes major changes in temperature, precipitation, wind patterns or other weather-related effects. Climate change may be due to natural processes or human-caused changes of the atmosphere, or a combination of the two.

NMED Ex. 110 at 3.

23. . The second sentence of the Department’s proposed definition, by using the disjunctive

“or,” effectively says that climate change could be due to *either* “natural processes” *or*

“human-caused changes of the atmosphere.” 1 Tr. p. 153, line 23 to p. 155, line 14.

24. CCW and GRIP propose adding the following alternate new the following new definition of

“climate change” to section 20.6.4.7.C NMAC:

“Climate change” refers to any significant change in the measures of climate lasting for an extended period of time, typically decades or longer, and includes major changes in temperature, precipitation, wind patterns or other weather-related effects. Climate change is due primarily to anthropogenic emissions of greenhouse gases into the atmosphere, in combination with natural processes.

CCW-GRIP Revised Ex. 1 at 1.

25. The CCW and GRIP proposed new definition of “climate change” clearly states that the

primary cause of climate change is the anthropogenic emission of greenhouse gases into the atmosphere. CCW-GRIP Revised Ex. 1 at 1.

B. DEFINITION OF “TOXIC POLLUTANTS”

26. DOE and Triad propose to revise the definition of “toxic pollutant” in section 20.6.1.7.T

NMAC as follows:

“Toxic pollutant” means those pollutants, or combination of pollutants, listed by the EPA Administrator under section 307(a) of the federal Clean Water Act, 33 U.S.C. § 1313(a) [sic] or in the list below.

LANL Ex. 1 at 3.

27. The proposal would eliminate the current narrative definition of “toxic pollutant.” LANL

Ex. 1 at 3.

28. The narrative portion of the definition serves to allow flexibility to address a contaminant not currently on the list without waiting to go through a years-long regulatory revision.” CCW-GRIP Ex. 5 at 6; Tr.
29. Including a list of pollutants in the definition of “toxic pollutants” is helpful. It would enhance certainty for all parties, and it would avoid unnecessary future arguments about whether those pollutants are or are not toxic. CCW-GRIP Ex. 5 at 5-6; 2 Tr. p. 619, lines 15-21.
30. The Department generally supported the definition proposed by CCW and GRIP, but was concerned that the word “includes” in the last sentence was limiting. 2 Tr. p. 448, lines 6-15. The Department witness suggested adding the phrase “but is not limited to” after the word “includes” in the last sentence. 2 Tr. p. 449, lines 4-6.

C. DEFINITION OF “EMERGING CONTAMINANTS”

31. The Department proposes to add a new definition of “contaminants of emerging concern” in section 20.6.1.7.C NMAC as follows:

“Contaminants of emerging concern” or “CECs” refer to water contaminants including, but not limited to, pharmaceuticals and personal care products that may cause significant ecological or human health effects at low concentrations. CECs are generally chemical compounds that, although suspected to potentially have impacts, may not have regulatory standards, and the concentrations to which negative impacts are observed have not been fully studied.

NMED Ex. 9 at 3.

32. Emerging water contaminants, such as poly- and per-fluoralkyl substances or PFAS, pharmaceuticals, microplastics, and some ingredients of cosmetics, among other water contaminants, are creating serious water quality problems in New Mexico. Amigos Bravos Ex. 3 at 7-10.
33. The Department needs to be able to require monitoring for emerging contaminants that are

not currently on the Clean Water Act toxic pollutant list. CCW-GRIP Ex. 5 at 7; Tr.

34. CCW and GRIP propose adding the following alternate new definition of “emerging contaminants” to section 20.6.4.7.E NMAC:

“Emerging contaminants” ~~Contaminants of emerging concern~~ or “CECs” ~~refer to water means~~ contaminants, including, but not limited to poly- and perfluoralkyl substances, pharmaceuticals and ingredients in personal care products, that may cause significant adverse ecological or human health effects at low concentrations. ~~CECs~~ Emerging contaminants are ~~generally~~ chemical compounds that, although suspected to potentially have ~~impacts~~ adverse effects, may not have regulatory standards, and the concentrations to which ~~negative impacts~~ adverse effects are observed may not have not been fully studied. An emerging contaminant may be a toxic pollutant if it falls within the definition of that term.

CCW-GRIP Revised Ex. 1 at 1; *see also* NMED Ex. 107 at 3 (addition of PFAS).

35. CCW and GRIP propose the following new subsection F to section 20.6.2.13 NMAC to expressly state and clarify that the Department has the authority to require monitoring for emerging contaminants: “An emerging contaminant shall be monitored if it may be present in effluent or receiving waters.” CCW-GRIP Revised Ex. 1 at 2. CCW-GRIP Revised Ex. 1 at 1; *see also* NMED Ex. 107 at 3 (addition of PFAS).

D. ANALYTICAL METHODS

36. DOE and Triad propose to amend the regulations to limit monitoring requirements, for purposes of compliance and state certification, to analytical methods approved by the United States Environmental Protections Agency under the federal regulations at 40 C.F.R. part 136.
37. The DOE and Triad proposal to limit monitoring requirements would severely limit the authority of the Department to require monitoring of certain toxic pollutants. In particular, the proposal would limit regulatory authority over polychlorinated biphenyls (PCBs) and per- and polyfluoralkyl substances (PFAS).
38. PCBs are highly toxic. AB Ex. 19 at 3.
39. The Commission has set the use-specific numeric surface water criteria for PCBs at 0.50

- micrograms per liter (μ /L) for drinking water supply. 20.6.9.4.900.J NMAC.
40. The Commission has set the use-specific numeric surface water criteria for PCBs at 0.014 μ /L for wildlife habitat. 20.6.9.4.900.J NMAC.
41. The Commission has set the use-specific numeric surface water criteria for PCBs at 2 μ /L for aquatic life, acute exposure; and at 0.014 μ /L for aquatic life, chronic exposure. 20.6.9.4.900.J NMAC.
42. The Commission has set the use-specific numeric surface water criteria for PCBs at 0.00064 μ /L for aquatic life, “human health-organism only.” 20.6.9.4.900.J NMAC.
43. EPA has approved the Arochlor analytical method to detect PCBs under 40 C.F.R. part 136. AB Ex. 19 at 4. The most recent version is Method 608.3. *Id.*
44. Method 608.3 is not capable of detecting PCBs at the lower levels of the State criteria, 0.014 μ /L and 0.00064 μ /L. AB Ex. 19 at 6-7; *see also* AB Ex. 22 at 4.
45. The method detection limit for Method 608.6 is 0.065 μ /L. AB Ex. 19 at 7; *see also* AB Ex. 22 at 4.
46. There are accurate and reliable methods for detecting PCBs at the lower levels of the State criteria. The congener method, Method 1668C, has been published by EPA, and it is routinely used in analytic laboratories, but EPA has not added the method to the list at 40 C.F.R. part 136. AB Ex. 19 at 7.
47. Method 1668C “is the definitive method for low-level PCB analysis”; it “is sensitive and reproducible”; and it can more accurately detect all PCB compounds than Method 608.3. AB Ex. 19 at 7.at 7.
48. Method 1668C can detect PCBs at the lower levels of the State criteria. The method detection limit for Method 1668C is (0.000007 to 0.000077 μ g/L. AB Ex.19 at 6; AB Ex. 22

at 4-5.

49. There are some 10,000 PFAS that have been synthesized. AB Ex. 17 at 6.
50. Most PFAS have not been evaluated to determine their toxicity, but many have been evaluated and found to cause adverse health effects in humans. AB Ex. 17 at 6. These effects include possible carcinogenicity, liver damage, increased risk of thyroid disease, increased risk of asthma, and other adverse health effects. *Id.*
51. Nine specific PFAS compounds should be treated as “toxic pollutants” as currently defined in the surface water regulations. AB Ex. 17 at 7-8; *see* 20.6.4.7.T(2) NMAC (definition of “toxic pollutant”).
52. EPA has not approved any methods for analysis of PFAS specifically under 40 C.F.R. part 136.
53. The EPA regulation at 40 C.F.R. part 136 “does not include methods for sampling or analytical techniques specifically for PFAS.” AB Ex. 17 at 6.
54. Under this proposal, the Department could not require DOE or its contractors to monitor for PFAS to comply with a permit effluent limit through certification of the Laboratory NPDES permit or otherwise. *See* AB Ex. 17 at 6.
55. There are accepted and reliable methods for PFAS analysis. EPA has developed and published several methods for testing PFAS in drinking water and surface water, including Method 537.1, which has been approved by the EPA Office of Research and Development. Method 537.1 has been used in New Mexico. AB Ex. 17 at 6-7.

E. CRITERIA FOR HEALTH OF HUMANS WHO INGEST FISH (“HH-OO”)

56. DOE and Triad proposed to revise section 20.6.4.11 NMAC, which governs the application of these criteria, as follows:

Human health-organism only criteria in Subsection J of 20.6.4.900 NMAC apply to those waters with a designated, existing or attainable ~~aquatic life~~ fish consumption use. If a tributary does not have an attainable fish consumption use, then HH-OO criteria do not apply to the tributary. If the fish consumption designated use is not attained in the first downstream segment with an attainable fish consumption designated use, then the tributary should be assigned a load allocation as required by 40 CFR Part 130. ~~When limited aquatic life is a designated use, the human health-organism only criteria apply only if adopted on a segment specific basis. The human health-organism only criteria for persistent toxic pollutants, as identified in Subsection J of 20.6.4.900 NMAC, also apply to all tributaries of waters with a designated, existing or attainable aquatic life use.~~

LANL Ex. 1 at 9.

57. The DOE and Triad proposal would limit the criteria to only those waters with a “fish consumption” use. However, no surface waters in New Mexico have a designated “fish consumption” use. CCW-GRIP Ex. 5 at 9.
58. The State surface water standards do not identify a “fish consumption” use. 20.6.4.900 NMAC.
59. The DOE and Triad proposal would eliminate the criteria from all waters in New Mexico. Yet these criteria have been adopted for 93 pollutants and currently apply to most surface waters in the State. CCW-GRIP Ex. 5 at 9.
60. CCW and GRIP oppose this DOE and Triad proposal. CCW-GRIP Ex. 5 at 9.
61. The Department opposed this proposal. NMED Ex. 107.
62. During the hearing, DOE and Triad have acknowledged the problems with the proposal, stating that “our proposal did not accomplish its objective.” 3 Tr. p. 810, line 18 to p. 811, line 22.

PROPOSED CONCLUSIONS OF LAW

I. STATUTES AND REGULATIONS

A. THE FEDERAL CLEAN WATER ACT

1. Congress enacted the Clean Water Act (“CWA”), originally the Federal Water Pollution

Control Act, on October 18, 1972. Pub. L. No. 92-500, 86 Stat. 816 (1972).

2. The express objective of the CWA “is to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” CWA § 101(a), 33 U.S.C. § 1251(a).
3. To achieve its objective, the CWA set the goal of eliminating the discharge of pollutants into navigable waters by 1985. CWA § 101(a)(1), 33 U.S.C. § 1251(a)(1).
4. The CWA set an interim goal of attaining water quality that provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water by 1983. CWA § 101(a)(2), 33 U.S.C. § 1251(a)(2).
5. The CWA established a national policy of prohibiting the discharge of toxic pollutants in toxic amounts. CWA § 101(a)(3), 33 U.S.C. § 1251(a)(3).
6. The CWA requires each state to develop water quality standards for waters within that state. CWA § 303(a)(3), 33 U.S.C. § 1313; *Defenders of Wildlife v. EPA*, 415 F.3d 1121, 1124 (10th Cir. 2005).
7. Under the CWA, water quality standards have three components: (a) designated uses for each body of water; (b) water quality criteria, which set a limit on the level of various pollutants that may be present without impairing the designated use of the water body; and (c) an antidegradation policy designed to prevent the water body from becoming impaired such that it cannot sustain its designated use. CWA § 303(c)(2), 33 U.S.C. § 1313(c)(2).
8. The CWA requires the water pollution control agency of each state to “hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards” at least once every three years. CWA § 303(c)(1), 33 U.S.C. § 1313(c)(1).
9. The CWA provides that the surface water quality standards are attained primarily through

effluent limits and other conditions contained in surface water discharge permits, or NPDES permits, issued by the United States Environmental Protection Agency (“EPA”). NPDES stands for National Pollutant Discharge Elimination System. CWA § 402, 33 U.S.C. § 1342.

10. The CWA provides that states must certify that any federal permit resulting in the discharge of pollutants into surface waters in that state will comply with all state and federal standards. CWA § 402, 33 U.S.C. § 1341.

B. THE NEW MEXICO WATER QUALITY ACT

11. The New Mexico Legislature enacted the Water Quality Act (“WQA”) in 1967. NMSA 1978, §§ 74-6-1 to 74-6-18.
12. The purpose of the WQA is “to abate and prevent water pollution.” *Bokum Res. Corp. v. N.M. Water Quality Control Comm’m*, 93 N.M. 546, 555, 603 P.2d 285, 294 (1979).
13. The Water Quality Act designates the Commission as the water pollution control agency for New Mexico. NMSA 1978, § 74-6-3.
14. The WQA requires the Commission to “adopt water quality standards for surface waters and ground waters of the state based on credible scientific data and other evidence appropriate under the Water Quality Act.” NMSA 1978, § 74-6-4(D).
15. The WQA provides that the standards must “include narrative standards and, as appropriate, the designated uses of the waters and the water quality criteria necessary to protect such uses.” NMSA 1978, § 74-6-4(D).
16. The WQA provides that the standards must “at a minimum protect the public health or welfare, enhance the quality of water and serve the purposes of the Water Quality Act.” NMSA 1978, § 74-6-4(D).
17. The WQA provides that, in setting standards, the Commission must “give weight it deems

appropriate to all facts and circumstances, including the use and value of the water for water supplies, propagation of fish and wildlife, recreational purposes and agricultural, industrial and other purposes.” NMSA 1978, § 74-6-4(D).

C. THE SURFACE WATER STANDARDS

18. The Commission has adopted surface water standards for interstate and intrastate surface waters in New Mexico. 20.6.4 NMAC.
19. The express purpose of the regulations is to establish water quality standards that consist of the designated uses of surface waters, the water quality criteria necessary to protect the uses, and an antidegradation policy. 20.6.4.6.A NMAC.
20. The regulations are also designed to meet the requirements of the federal Clean Water Act. 20.6.4.6.B NMAC.

II. ISSUES

A. CLIMATE CHANGE

21. Courts regularly look to the purpose of a statute or regulation in discerning its meaning. *See, e.g., N.M. Dep't of Game & Fish v. Rawlings*, ¶ 6, 2019-NMCA-018 (“When interpreting a statute, a court’s primary goal is to facilitate and promote the Legislature’s *purpose*.”) (emphasis added).
22. The proposal of CCW and GRIP to add a new subsection D to section 20.6.4.6 stating that a purpose of these surface water quality standards is to address the inherent threats to water quality due to climate change is supported by substantial evidence in the record. *See* NMSA 1978, § 74-6-7.B(2).
23. The proposal of the Department to add a new definition of the term “climate change” to section 20.6.7.C NMAC is ambiguous as to the cause of climate change. 1 Tr. p. 153, line 23

to p. 155, line 14.

24. The proposal of CCW and GRIP to add a new definition of the term “climate change” to section 20.6.7.C NMAC is unambiguous and unequivocal that the primary cause of climate change is the anthropogenic emission of greenhouse gases into the atmosphere. CCW-GRIP Revised Ex. 1 at 1.
25. The proposal of CCW and GRIP the Department to add a new definition of the term “climate change” to section 20.6.7.C NMAC is supported by substantial evidence in the record. *See* NMSA 1978, § 74-6-7.B(2).

B. DEFINITION OF “TOXIC POLLUTANT”

26. The procedural mechanism by which the Department adds an effluent limit for a toxic pollutant to an NPDES permit is through certification of the permit under section 401 of the Clean Water Act. 33 U.S.C. § 1341.
27. The Department may include the effluent limit as a condition of certification, but the Department would need to show that the subject pollutant meets the definition of “toxic pollutant.” 33 U.S.C. § 1341.
28. The Department’s certification can be appealed. Under the Water Quality Act, “a person affected by the certification of a federal permit and who is adversely affected by such . . . certification may file a petition for review before the [C]ommission.” NMSA 1978, § 74-6-5.O. And “a person . . . who participated in a[n] . . . appeal of a certification before the [C]ommission and who is adversely affected by such action may appeal to the court of appeals for further relief.” NMSA 1978, § 74-6-7.A.
29. The final NPDES permit issued by EPA can also be appealed. Under the Clean Water Act, any person can appeal an EPA action “in issuing or denying any permit under section [402].”

33 U.S.C. § 1369(b)(1).

30. In 1979, the New Mexico Supreme Court held that the original definition of “toxic pollutant” in the groundwater quality regulations was unconstitutionally vague. *Bokum Resources Corp. v. N.M. Water Quality Control Commission*, 1979-NMSC-070, 93 N.M. 546.
31. As originally defined in the groundwater quality regulations, a “toxic pollutant” was a contaminant that would, “on the basis of information available to the director or the commission, cause death, disease,” or other serious adverse health effects. *Bokum* ¶ 7, 93 N.M. at 548. The court found that the words “available” and “information” were unclear and potentially limitless. *Id.* ¶¶ 9, 11, 93 N.M. at 548-49. The Court thus found this wording to be “unconstitutionally vague.” *Id.* ¶ 33, 93 N.M. at 552.
32. In 1982, the Court of Appeals upheld a revised definition of “toxic pollutant” in the groundwater quality regulations. *Kerr-McGee Nuclear Corp. v. N.M. Water Quality Control Commission*, 1982-NMCA-015, 98 N.M. 240.
63. Although the revised definition of “toxic pollutant” did not include specific numerical limits, the court upheld the definition because specific limits would be included in the permit. The court stated:
- Although there are no numerical standards in the regulations for what concentration of compounds triggers the label “toxic pollutant,” this is not detrimental to the dischargers. The Director will make those determinations *before* a discharge plan [i.e., permit] is approved or disapproved, and the discharger will be notified. The lack of numerical standards is, therefore, not a basis for finding the statute [sic] unconstitutional.
- Kerr-McGee*, ¶ 13, 98 N.M. at 245 (emphasis by the court).
33. The existence of a list of pollutants in the definition of “toxic pollutant” was not a significant fact that the court cited in either *Bokum* or *Kerr McGee*.
34. The proposal by DOE and Triad to revise the definition of “toxic pollutant” in section

20.6.7.T NMAC is not supported by substantial evidence in the record. *See* NMSA 1978, § 74-6-7.B(2).

35. The proposal of CCW and GRIP to revise the definition of the term “toxic pollutant” to section 20.6.7.T NMAC is supported by substantial evidence in the record. *See* NMSA 1978, § 74-6-7.B(2).

C. DEFINITION OF “EMERGING CONTAMINANTS”

36. The proposal of CCW and GRIP to add a new definition of the term “emerging contaminant” in section 20.6.7.E NMAC is supported by substantial evidence in the record. *See* NMSA 1978, § 74-6-7.B(2).

D. ANALYTICAL METHODS

37. The Department has the authority to require the use of analytical methods that are not approved by EPA under 40 C.F.R. part 136.
38. The proposal by DOE and Triad to amend the regulations to limit monitoring requirements is not supported by substantial evidence in the record. *See* NMSA 1978, § 74-6-7.B(2).

E. CRITERIA FOR HEALTH OF HUMANS WHO INGEST FISH (“HH-OO”)

39. The Commission has established water quality criteria to protect the health of humans who ingest fish or other aquatic organisms from New Mexico surface waters. 20.6.4.900 NMAC; *see* 20.6.4.7.H(2) NMAC.
40. The proposal by DOE and Triad to amend the criteria established to protect the health of humans who ingest fish and shellfish not supported by substantial evidence in the record. *See* NMSA 1978, § 74-6-7.B(2).

Respectfully submitted,

September 24, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of September 2021, a copy of the foregoing Joint Proposed Statement of Reasons by Communities for Clean Water and the Gila Resources Information Project was sent by electronic mail to:

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